

**ZONING BOARD OF ADJUSTMENT
MINUTES
NOVEMBER 4, 2003
(Approved as amended 12/2/03)**

PRESENT: Forrest Esenwine, Chairman; Jack Dearborn, Vice Chairman; Tim Galvin, Alternate; Naomi L. Bolton, Land Use Coordinator

GUESTS: Ginger Esenwine; Richard W. Head; Christine Javery; Cindy Gourley; Noel Gourley; James Coughlin, Trustee of Holly Hill Farm Trust

I. CALL TO ORDER:

Chairman Forrest Esenwine called this meeting to order at 7:45 PM at the Weare Town Office Building and apologized for the late start. Chairman Esenwine explained the process by which the board conducts business. Chairman Esenwine appointed Tim Galvin to sit as a voting member for tonight's cases.

II. PUBLIC HEARINGS:

Case #3503 Holly Hill Farm Trust (James Coughlin, Trustee) (Continued)

Special Exception, Article 28, Section 28.7.1 and

Special Exception, Article 27, Section 27.3.10

Applicant is requesting permission to permit construction of a paved roadway and associated grading within an area that has been defined as a wetland. Also, applicant is requesting permission to have individual wells and septic systems in a cluster development.

Tax Map 405-073

Flanders Memorial Road

James Coughlin, Trustee of the Holly Hill Farm Trust was present for this hearing. Mr. Coughlin explained that they were on the agenda last month, but without having the State Subdivision approval, State Site Specific and State wetlands permits in hand, the board continued the hearing to tonight. Mr. Coughlin explained that they are here for two special exceptions, one to allow individual wells and septic systems and two to allow construction of a paved roadway through a wetland. Mr. Coughlin explained that they have received all three State approvals, which he gave the board copies of all three. Mr. Coughlin then went through the seven conditions required for a special exception for the individual wells and septic systems, as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: This site is an appropriate location for the uses as residential lots with individual septic systems and wells. Each lot has suitable area for on site septic systems and wells to include 75 foot wetland setback for septic systems and 75 foot protection well radii. The soils are well suited for individual on-site septic systems. All wells will be drilled and all lots are a minimum of one (1) acre.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighborhood area: All adjacent properties have individual wells and septic systems. The total acreage of the project is 170+/- acres and consists of good quality soils. There are 45 lots on 170+/- acres which is a density of almost 3.7 acres per lot. The lots were sized to meet NHDES standard grid lot sizes, which are up to 4 times larger than NHDES cluster lots. Because of our overall density and larger lot sizes, there will be no reduction of real estate values of surrounding properties.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: Individual septic systems and wells have no impact on vehicular traffic or pedestrians. We have done a traffic report as requested by the Planning Board and it has been reviewed by the Town Traffic Consultant.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: Each lot is sized accordingly to the NHDES requirement for individual house lots for at least 4 bedrooms. The cluster provisions will allow only 3 bedroom systems. Each septic system will be constructed to current NHDES requirements. Each well will have a 75 foot protective radius. Each lot can stand alone for an individual well and septic system. There will not be any burden on the Town through the provision of basic Town services, since each septic system and well are on individual lots and are the responsibility of the owner of each lot and not the responsibility of the Town.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: There is adequate off-street parking on each lot with on-site septic systems and wells. Each lot will have at least 3 cars.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: The cluster project will have a 100 foot buffer zone around the property as required by the cluster development ordinance.
7. The Zoning Board of Adjustment, in granting any special exception may include such restrictions or conditions to insure compliance with this section: The applicant does not see any need for restrictions or conditions to ensure compliance, except that the granting of the special exception should be conditioned on the receipt of the NHDES Subdivision Approval.

Being there were no further comments or questions, Mr. Coughlin then went through the seven conditions for the special exception for the wetlands crossing, as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: This site is an appropriate location for roads and driveways to access residential lots, for which the property is zoned. The wetland crossings have no impact on overall community development.

2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the area: The wetland crossings will have no adverse affect on the adjacent properties or their property values. Proper drainage, erosion and sediment controls are designed to avoid adverse affects on adjacent properties.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: Wetlands impacts will have no impact on vehicular traffic or pedestrians. The crossings allow for access for vehicles and pedestrians to viable uplands.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: The wetland crossings have been designed according to Town requirements for roads and access ways and will not cause an undue burden on the Town through the provision of basic Town services.
5. Adequate off-street parking will be provided if determined necessary by the Zoning Board of Adjustment: There is adequate paved off street parking on each lot. Each lot will have room for at least 2 cars. No wetlands are altered for parking.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence, screens, dense planting or suitable trees and shrubbery or naturally occurring shrubs and trees: The cluster project will have a 100 foot buffer zone around the property as required by the cluster development ordinance. The wetland crossings are a minimum of 500 feet from any abutting lot, and will not be seen from any abutting lot.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions and conditions to ensure compliance for this section: The applicant does not see any need for restrictions of conditions to ensure compliance, except that the granting of the special exception should be conditioned on the receipt of NHDES Wetlands Approval.

Mr. Coughlin further added the following information regarding the special exception for the wetlands crossing as it relates to the Zoning Ordinance.

1. The wetland crossings are essential to the productive use of the land. The crossings allow access to be gained to viable uplands.
2. The proposed location and construction are in areas designed to minimize detrimental impacts within the Wetland Zone. Drainage, erosion and sediment controls have been designed to avoid impacts to adjacent properties and wetlands. The design of the cluster development provides for an undisturbed corridor along Zephaniah Breed Brook as well as 98 acres of open space both within and outside the Wetlands Zone.

Approving Abutters: NONE

Disapproving Abutters: Richard Head, 192 Flanders Memorial Road, was present and read the following letter to the board.

“As owners of property located at 192 Flanders Memorial Road, Lots 405-74 and 405-74.1, we will be directly and adversely impacted by the cluster development proposed for construction on the Paulding Farm.

Flanders Memorial Road

Flanders Memorial Road is a historic road within the Town of Weare. The Town has maintained its historic character and the roads lead to some of the oldest homes in the Town. The Paulding Farm itself affords a unique open space within the Town, with views that include Mount Washington in the distance. Traveling from the Paulding Farm toward Route 114, a driver drops down a steep hill with two sharp turns near the top and enters another turn at the juncture with Duck Pond Road. Flanders Memorial is a narrow road that empties onto Route 114.

The proposed project will result in approximately 400-500 new vehicle trips per day. The housing units themselves will be two or three bedroom homes. There will be an impact not only on the residents of Flanders Memorial Road, but upon Town services generally. Flanders Memorial Road is not serviced by school bus service. Therefore, a number of school children walk or ride bikes to and from school. Sight lines all along Flanders Memorial Road are limited, significantly increasing the risk of accident.

The Weare school system is already overcrowded, even without the new development. Even though the project is to be phased over four years, there is no proposed development of new school buildings or increasing teaching staff. Phasing only delays the problem over time, but does not eliminate the problem.

Zoning Ordinance, Article 28.7.1 Wetlands Zoning Special Exceptions: "Street, roads, and other access ways and utility right-of-way easements, including power lines and pipe lines, if essential to the productive use of the land and if so located and constructed as to minimize any detrimental impact of such uses upon and within the Wetlands Zone."

Article 28.7.1 acts as a gatekeeper to the other special exception provisions of the zoning ordinance. If the applicant is unable to meet the requirement of Article 28.7.1, the seven part test of Article 6.1.4 does not get triggered and the special exception must be denied.

The key to Article 28.7.1 is that a special exception is allowed for the construction only if it is *essential* to the productive use of the land. This Article does not authorize a special exception in order to *maximize* the use of the property. Instead, Article 28.7.1 allows for a special exception if there is no other productive use of the property. The applicant has not demonstrated that a 46-house cluster subdivision is the only productive use of the property. Indeed, the long history of the operation of a farm on the property leads to the conclusion that the special exception is not essential for the productive use of the property.

Given the expansive views, open fields and woodland, the property and existing farmhouse already make productive use of the property. A 46-lot cluster subdivision is not the only essential use of the property.

As is outlined below, even if the applicant could get beyond the test of Article 28.7.1, the applicant cannot demonstrate it is eligible for a special exception under the 7-part evaluation of Article 6.1.4.

Zoning Ordinance Article 6.1.4 Special Exceptions:

“The Board of Adjustment shall hear and may grant such special exceptions as are indicated by the terms of this ordinance provided that the Board finds that all of the following conditions are met:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section.”

The specific site is not an appropriate location for a 46-house cluster development.

Flanders Memorial Road is zoned Rural/Agricultural (RA). Article 13.1.2 defines RA zoning as meaning “[t]hat area that is a combination of residential, agricultural and undeveloped land where greater emphasis is focused on limited density and a more diverse use than strictly residential is allowed.” The Paulding farm on which the Holly Farm subdivision is proposed is a unique property in Weare. Given its location and open spaces, it presents views unique to the Town. Given its status within the RA zone, it represents a unique piece of property that fits within the intent of maintaining open agricultural land in its current use.

The Paulding Farm is located at the top of a steep hill that winds from the farm down several sharp turns to discharge onto Route 114. The intersection with Route 114 is itself a difficult intersection. The size of the subdivision creates an unnecessary safety risk of the residents of Flanders Memorial Road.

The proposed use will be a nuisance or serious hazard to vehicular traffic or pedestrians.

The proposed use will, at a minimum, pose a nuisance to the residents of Flanders Memorial Road, as well as those who pass through the intersection of Route 114 and Flanders Memorial Drive at peak traffic periods. More likely is the risk of a serious hazard created because of the proposed cluster subdivision. Flanders Memorial Road is not serviced by a school bus. As a result, it is common for school children to walk or ride bikes on Flanders Memorial Road in the early morning and afternoon after school. The road itself is narrow and has many sharp turns resulting in limited sight lines.

On average, a single-family residence will generate 10 trips per day. Upon completion, the proposed cluster development will generate roughly 450 additional trips on Flanders Memorial per day. These trips will be in addition to vehicle trips generated by existing houses as well as new development on and near Lake Horace. Flanders Memorial Road is commonly used by lakefront homeowners to access their properties. Residents of Deering and other towns traveling to and from the Concord area also use Flanders Memorial Road.

Flanders Memorial Road is not designed to safely handle the additional load that will be generated by construction of this project. The sharp turns and steep grade of the hill create a hazardous situation for travelers on the road.

The proposed use will cause an undue burden on the Town through the provision of basic Town services.

One requirement of the cluster housing article is that the applicant “not locate within one hundred (100) feet of the property line of any other residential property and shall provide and maintain a strip of nativized plantings along and within the buffer strip.” Article 27.3.9. Not only has the applicant not incorporated a 100 foot buffer, but along the field between our lot and the proposed subdivision, the applicant has refused to incorporate within its plan any nativized plantings along and within the buffer strip. It is a violation of the zoning ordinance, and the applicant has not demonstrated it is eligible for a Special Exception.

Article 27.2.10: “The development shall be served by central sewerage. Central wells are required in all developments of 15 or more dwelling units. Where cluster developments can meet minimum NH Water Supply and Pollution Control Division standards individual septic systems and wells shall be allowed by Special Exception.”

One of the requirements of a cluster development is that the “cluster housing shall not locate within one hundred (100) feet of the property line of any other residential property and shall provide and maintain a strip of nativized plantings along and within the buffer strip.” Article 27.3.9. Although we do not believe the plan has properly allowed for a 100-foot strip between the cluster lots and our property line, the proposed individual septic systems intrude within the 100-foot strip that the applicant does provide. Thus, the proposed sewage design improperly extends into the 100-foot buffer that is off limits to development. Therefore, the site is not appropriate for individual septic systems.

Thank you for allowing us this opportunity to express our opinion on the proposed project.

Very truly yours,
Richard Head
Melinda Gehris
192 Flanders Memorial Road
Weare, NH 03281”

Public At Large: NONE

Other Boards: NONE

Rebuttal of Applicant: Mr. Coughlin responded to Mr. Head's comments and stated that these issues have all been ironed out at the Planning Board level and was discussed thoroughly for the past 6 months. The issues with traffic and buffer came out at the Planning Board level and Mr. Head was against it all through that process too.

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 8:35 PM.

Case #3803 Cindy Gourley

Special Exception, Article 19, Section 19.1.8

Applicant is requesting permission to establish an in home licensed child care facility.

Tax Map 403-227

52 Ann's Drive (Private Rd)

Noel and Cindy Gourley were present. Mrs. Gourley explained that she would like to establish an in home licensed child care facility. Mrs. Gourley stated that she has already been approved by the State and offered the paperwork to the board for review. Chairman Esenwine moved to accept the application as complete, Tim Galvin seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin). Mrs. Gourley went through the seven conditions needed for a special exception as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: Due to the rapid growth and desirable location of the Town of Weare, a State licensed child care facility will be a convenient service to the families in our area.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighborhood area: The home as well as all outdoor play structures will be kept free from debris and in good working condition. We will comply with all State and Town inspections and recommendations.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: A 15 MPH sign is posted and shall be required to be upheld by all who contract with us, our property has a large enough parking area to accommodate all vehicles during drop off and pick up times, therefore no parking will be done on the road.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: As a State licensed child care facility, we will abide by all fire, health and safety requirements minimizing the need/risk of needing Town services. Annual inspections are required by the Town and the State and will be upheld.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: Adequate off-street parking is readily available and shall be used as the primary parking available.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally

- occurring shrubs and trees: Proposed property in a very private setting with, natural forest growth buffers already naturally in place.
7. The Zoning Board of Adjustment, in granting any special exception may include such restrictions or conditions to insure compliance with this section: We are willing to work with the Town to make this facility as positive as possible for both parties.

Approving Abutters: Christine Javery, 46 Ann's Drive, abutter stated that they have no problem with the day care proposal.

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

The board asked about the maintenance of this private road. Mrs. Gourley stated that they have an association that they all contribute into which covers the plowing, sanding and grading. Mr. Gourley stated that he also has a plow truck and clears his driveway in the early morning hours. They also pointed out that the mail delivery has always made it. Being there was no further comments or question, Chairman Esenwine closed this hearing at 8:50 PM.

Case #3903 Brook Shire, LLC
Special Exception, Article 27, Section 27.3.10
Applicant is requesting permission to allow individual wells and septic systems in a cluster development.
Tax Map 412-197 & 147 South Stark Highway

Bob Bakserville, owner was present and explained to the board that he would like to request a continuance due to the fact that he does not have State subdivision approval in hand, which is needed for approval.

III. CASE DECISIONS:

Case #3503 Holly Hill Farm Trust (James Coughlin, Trustee) (Continued)
Special Exception, Article 28, Section 28.7.1 and
Special Exception, Article 27, Section 27.3.10
Applicant is requesting permission to permit construction of a paved roadway and associated grading within an area that has been defined as a wetland. Also, applicant is requesting permission to have individual wells and septic systems in a cluster development.
Tax Map 405-073 Flanders Memorial Road

Article 27.3.10: Condition #1: Chairman Esenwine moved to approve condition #1, Jack Dearborn seconded the motion. Discussion: Due to the fact that the State has already given approval, and it seems to fit with what the board was looking for at last months hearing, the board felt it is a compliant use of the zoning. A vote was taken: Unanimous vote in favor (Dearborn, Esenwine, Galvin). Condition #2: Tim Galvin moved to approve condition #2, Jack Dearborn seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin). Condition #3: Chairman Esenwine moved to approve condition #3, Tim Galvin seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin).

Condition #4: The board felt it exceeds all the requirements needed. Chairman Esenwine moved to approve condition #4, Tim Galvin seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin). Condition #5: Tim Galvin moved to approve condition #5, Jack Dearborn seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin). Condition #6: The board felt that the buffer zone is for something that would affect the site. Having a well located in the buffering wouldn't require any additional plantings for buffering. Tim Galvin moved to approve condition #6, Jack Dearborn seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin). Condition #7: The state approvals have been granted. Jack Dearborn moved to approve condition #7 with no additional requirements required, Tim Galvin seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin).

Article 28.7.1: Condition #1: Chairman Esenwine moved to approve condition #1 as it would minimize the impacts, as well as the reduction of lots, from the original plan also is minimizing, Tim Galvin seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin). Condition #2: Jack Dearborn moved to approve condition #2, Tim Galvin seconded the motion. The board felt that the Town has already seen and approved all the erosion control methods. A vote was taken: unanimous vote in favor (Dearborn, Esenwine, Galvin). Condition #3: Jack Dearborn moved to approve condition #3, Tim Galvin seconded the motion. The board has to limit the discussion to the wetlands and there is nothing that is not compliant. The road in the cluster development is going to be a compliant road. A vote was taken: unanimous vote in favor (Dearborn, Esenwine, Galvin). Condition #4: The Town will end up plowing this road. The culverts will be going under the road and properly done, so it will not have any affect on water getting onto the road. Tim Galvin moved to approve condition #4, Chairman Esenwine seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin). Condition #5: Jack Dearborn moved to approve condition #5, Tim Galvin seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin). Condition #6: The board stated that this is all being done within the development. Chairman Esenwine moved to approve condition #6, Tim Galvin seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin). Condition #7: Jack Dearborn moved to approve condition #7 with no additional requirements required, Tim Galvin seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin).

Jack Dearborn moved to accept Case #3503 and grant both special exceptions as requested, Tim Galvin seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin).

Case #3803	Cindy Gourley
	Special Exception, Article 19, Section 19.1.8
	Applicant is requesting permission to establish an in home licensed child care facility.
	Tax Map 403-227
	52 Ann's Drive (Private Rd)

Jack Dearborn stated that he doesn't see an issue with anything in this application. Tim Galvin and Chairman Esenwine agreed with Mr. Dearborn. Jack Dearborn moved to

accept all 7 conditions and grant the special exception on Case #3803 as requested, Tim Galvin seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin).

Case #3903 Brook Shire, LLC
Special Exception, Article 27, Section 27.3.10
Applicant is requesting permission to allow individual wells and septic systems in a cluster development.
Tax Map 412-197 & 147 South Stark Highway

Jack Dearborn moved to continue this case to December 2, 2003, Chairman Esenwine seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin).

IV. OTHER BUSINESS:

AUGUST 5, 2003 MINUTES: Chairman Esenwine moved to approve the August 5, 2003 minutes as amended, Tim Galvin seconded the motion, all in favor.

SEPTEMBER 9, 2003 MINUTES: These minutes will be taken up at the next meeting.

OCTOBER 7, 2003 MINUTES: Chairman Esenwine moved to approve the October 7, 2003 minutes as amended, Tim Galvin seconded the motion, all in favor.

REQUEST FOR REHEARING-CASE #2903: Naomi informed the board that a request for rehearing petition was delivered to the office this afternoon. The board reviewed the information that was submitted and felt that there was new evidence attached to warrant a rehearing. Therefore, Jack Dearborn moved to grant the request for rehearing on Case #2903, Tim Galvin seconded the motion, unanimous vote in favor (Dearborn, Esenwine, Galvin). The rehearing will be scheduled for December 2, 2003.

V. ADJOURNMENT:

As there was no further business to come before the board, Jack Dearborn moved to adjourn at 9:30 PM, Tim Galvin seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator